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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,862	11/05/2003	Michael Resterhouse	FFC-001096 P2	7776
30981	7590	09/12/2005	EXAMINER	
King & Jovanovic, PLC 170 College Avenue SUITE 230 HOLLAND, MI 49423			PETERSON, KENNETH E	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/701,862

Applicant(s)

RESTERHOUSE ET AL.

Examiner

Kenneth E. Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08).
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The disclosure and claim 8 are objected to because it is inappropriate to call element 41 a "handle member", since it is not handled. The term "bar" or "link" would be acceptable. Also, at the end of claim 8, the term "the slot of the lower surface of the at least one clamp" lacks proper antecedent basis.

Appropriate correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Keesling '854, who shows a separator with all of the recited limitations including a frame (figure 1), a slotted clamp (126a, 126b, figure 4), a clamp actuator (130), a blade (42) and a blade actuator (50, 58).

Both the clamp and the clamp actuator pivot relative to the frame.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by D'Angelo et al. '983, who shows a separator with all of the recited limitations including a frame (figure 1), a slotted, pivotable clamp (124, 125), a clamp actuator (lines 15-32, column 9), a blade (85, 86) and a blade actuator (94).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keesling '854, who shows a separator with most of the recited limitations.

In regards to at least claims 2-4 Keesling's blade does not have the recited details. Examiner takes Official Notice that it is well known for traversing cutters to having concave blade surfaces for cutting in either direction. Examples of this are the patents to King '169 (see figure 3) and Eger '842 (semi-circular cutting edge in figure 5). Additional examples can be provided if needed. It would have been obvious to one of ordinary skill in the art to have modified Keesling by employing a cutter having opposed concave or semi-circular cutting edges, as is well known and taught by Eger and King, in order to help keep the workpiece vertically centered in the slot.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Angelo '983, who shows a separator with most of the recited limitations.

In regards to at least claims 2-4 D'angelo's blade does not have the recited details. Examiner takes Official Notice that it is well known for traversing cutters to having concave blade surfaces for cutting in either direction. Examples of this are the patents to King '169 (see figure 3) and Eger '842 (semi-circular cutting edge in figure 5).

Additional examples can be provided if needed. It would have been obvious to one of ordinary skill in the art to have modified D'Angelo by employing a cutter having opposed concave or semi-circular cutting edges, as is well known and taught by Eger and King, in order to help keep the workpiece vertically centered in the slot.

8. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirao et al.'310, who shows a separator with most of the recited limitations including a frame (figure 1), a slotted clamp (70), a clamp actuator (112), a blade (126) and a blade actuator (28).

Hirao's clamp actuator and "handle member" are not pivotable. However, Examiner takes Official Notice that in the art of clamping separators, it is old and well known to have a clamp be both pivotal and slidable on the frame, and for the actuator to have two pivot junctions. An example of this is the patent to Lamson '380, who shows a slotted clamp (28) that has a "handle member" (88) that slides on the frame (45) and can pivot, and also shows a clamp actuator (30) that is pivotally connected at one end (31) to the frame and at another end (30') to the handle member. A second example of this is the patent to Keesling, who shows a slotted clamp (126a, 126b) that has a "handle member" (134) that translates vertically (via 120, 122) relative to the frame, has a first end (138) pivotally attached to the clamp and a second end (136) that is pivotable relative to the frame. Keesling also shows a clamp actuator (130) that is pivotally associated at one end to the frame and at another end to the handle member (134). It would have been obvious to one of ordinary skill in the art to have modified Hirao to employ a clamp that is pivotal and translatable on the frame, and for the actuator to

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have two pivot junctions, as is well known and taught by Lamson or Keesling, in order to simplify the device and therefor decrease costs.

In regards to at least claims 2-4 and 9-11, Hirao's blade is not shown in detail, so it is not known if it has a concave blade surface. Examiner takes Official Notice that it is well known for traversing cutters to having concave blade surfaces for cutting in either direction. Examples of this are the patents to King '169 (see figure 3) and Eger '842 (semi-circular cutting edge in figure 5). Additional examples can be provided if needed. It would have been obvious to one of ordinary skill in the art to have modified Hirao by employing a cutter having opposed concave or semi-circular cutting edges, as is well known and taught by Eger and King, in order to keep the workpiece vertically centered in the slot.

9. Applicant's arguments have been fully considered but they are not persuasive.

In regards to the objection to the specification and claim 8, Applicant argues that he can be his own lexicographer. While it is true that Applicant is permitted to use words in new ways, Applicant is not permitted to use words in ways that are contrary to their normal meaning. In this case, the term "handle" has a clear and well established meaning of an extension that is gripped by the hand. Applicant's use of the term "handle member" to refer to a linkage that is in no way manipulated by a hand is misleading.

It is noted that Applicant has not addressed the lack of antecedent basis as objected to in claim 8.

Applicant's arguments against the prior art rejection are not persuasive, especially in light of the new references to Keesling and D'Angelo. It is noted that Keesling may even read on claim 8 under 35 USC 102b, but Examiner will not bring up this new rejection since Applicant has not changed claim 8.

Applicant argues that Lamson does not disclose a slotted clamp. On the contrary, Lamson's clamp (94) has a slot in it (103) for passage of the blade (16) as best seen in figure 20.

Applicant argues that Lamson's "handle member" (88) does not pivot. However, as best seen in figure 1, element 88 is actuated by separate actuators on opposite sides of the table. Given that each of the actuators can be actuated separately (and probably *are* actuated separately), the element 88 experiences a rocking, or pivoting motion as it is lowered down.

This is not to say that Applicant's invention is unpatentable. There are numerous complexities (e.g. 44,46,48,50,22) of Applicant's clamping device that have not yet been claimed and may or may not distinguish over the prior art.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth E. Peterson whose telephone number is 703-308-2186. The examiner can normally be reached on Mon-Thur, 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KP 07 Sep 05


KENNETH E. PETERSON
PRIMARY EXAMINER